



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EUGENE LUMLEY, Individually and on Behalf  
of All Other Persons Similarly Situated,

Plaintiffs,

-against-

UNITED STATES TRUST COMPANY, N.A.,  
BANK OF AMERICA, N.A., JOHN DOES #1-  
10, Jointly and Severally,

Defendants.

No. 08 CV 3993 (SAS) (AJP)

**TOLLING AGREEMENT AND  
STIPULATION AND ORDER  
EXTENDING DEFENDANT'S TIME  
TO OPPOSE PLAINTIFF'S MOTION  
FOR APPROVAL OF COLLECTIVE  
ACTION AND NOTICE AND  
SETTING FORTH BRIEFING  
SCHEDULE FOR MOTION**

IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiff EUGENE LUMLEY, Individually and on Behalf of All Other Persons Similarly Situated ("Plaintiff") and Defendant BANK OF AMERICA, NATIONAL ASSOCIATION ("Defendant"),<sup>1</sup> through their respective counsel undersigned below, that the time for Defendant to file and serve its opposition to the Motion for Approval of Collective Action and Notice filed by Plaintiff on Friday, June 13, 2008 in the above captioned matter is extended thirty (30) days from June 30, 2008 to and including July 30, 2008 and Plaintiff's reply brief, if any, is to be filed and served on or before August 14, 2008.

IT IS HEREBY FURTHER STIPULATED AND AGREED, by and between Plaintiff and Defendant ("the Parties") that:

1. In consideration of Plaintiff's agreement to extend Defendant's time to file and serve its opposition to Plaintiff's Motion for Approval of Collective Action and Notice thirty (30) calendar days from Monday, June 30, 2008 to Wednesday, July 30, 2008, in connection with which extension

<sup>1</sup> On May 30, 2008, the Court So Ordered a Stipulation dismissing Defendant United States Trust Company, N.A. from the above-entitled action. Thus, this Tolling Agreement and Stipulation and Order is entered into by Defendant Bank of America, National Association and Plaintiff.

counsel for Plaintiff is hereby agreeing to execute this Tolling Agreement and Stipulation and Order ("Stipulation and Order"), Defendant agrees to a Tolling Period as defined in paragraph 2 below.

2. The Parties agree that the time between June 30, 2008 and July 30, 2008 will be tolled in the following manner: if conditional certification of the FLSA collective action is granted and notice of pendency of the collective action is distributed, then any individual who opts in to the FLSA collective action and becomes a plaintiff in this matter will have the statute of limitation for his or her FLSA claim tolled for thirty (30) calendar days ("Tolling Period").

3. Defendant agrees that the defense of statute of limitations shall not be raised with respect to plaintiffs who opt in after conditional certification has been granted where the defense becomes available solely as a consequence of the passage of time between June 30, 2008 and July 30, 2008, provided, however, that Defendant preserves its right to raise these defenses where these defenses are otherwise available.

4. By executing this Stipulation and Order, Defendant expressly denies responsibility or liability for any claims that may be asserted against it by Plaintiff or others similarly situated.

5. The Parties to this Stipulation and Order represent that each of them has been represented by counsel in connection with the making and execution of this Stipulation and Order and has entered into this Stipulation and Order voluntarily and without pressure or duress from the other party. The undersigned counsel for the Parties represent and warrant that they have been duly authorized by their respective clients to execute this Stipulation and Order on behalf of their respective clients.

6. This Stipulation and Order shall be governed by and interpreted in accordance with the laws of the State of New York.

7. This Stipulation and Order contains the entire agreement of the Parties with respect to the subject matter hereof and may not be modified in any way except by a subsequent written agreement duly executed by each of the Parties to this Stipulation and Order and So Ordered by the Court.

WHEREFORE, the Parties have caused this Stipulation and Order to be executed effective as of June 20 2008.

Dated: New York, New York  
June 20, 2008

Dated: New York, New York  
June 19, 2008

ORRICK, HERRINGTON & SUTCLIFFE LLP

LAW OFFICE OF WILLIAM COUDERT RAND

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SO ORDERED:

  
UNITED STATES DISTRICT JUDGE

6/20/08  
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